

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including —

- (i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;
- (ii) Observations of the child; and
- (iii) The child's IEP and placement; and

(2) Then determine that—

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) *Decision.* If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) *Meeting.* The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under § 300.520(b).

(f) *Deficiencies in IEP or placement.* If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

(Authority: 20 U.S.C. 1415(k)(4))

§ 300.524 Determination that behavior was not manifestation of disability.

(a) *General.* If the result of the review described in § 300.523 is a determination, consistent with § 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children with-

out disabilities, except as provided in § 300.121(d).

(b) *Additional requirement.* If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) *Child's status during due process proceedings.* Except as provided in § 300.526, § 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in § 300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 U.S.C. 1415(k)(5))

§ 300.525 Parent appeal.

(a) *General.* (1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under §§ 300.520–300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) *Review of decision.* (1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of § 300.523(d).

(2) In reviewing a decision under § 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in § 300.521.

(Authority: 20 U.S.C. 1415(k)(6))

§ 300.526 Placement during appeals.

(a) *General.* If a parent requests a hearing or an appeal regarding a disciplinary action described in § 300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim

alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in § 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

(b) *Current placement.* If a child is placed in an interim alternative educational setting pursuant to § 300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) *Expedited hearing.* (1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in § 300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary.

(Authority: 20 U.S.C. 1415(k)(7))

§ 300.527 Protections for children not yet eligible for special education and related services.

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§ 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a

child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* An LEA must be deemed to have knowledge that a child is a child with a disability if—

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with § 300.7;

(3) The parent of the child has requested an evaluation of the child pursuant to §§ 300.530–300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency—

(1) Either—

(i) Conducted an evaluation under §§ 300.530–300.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with § 300.503.

(d) *Conditions that apply if no basis of knowledge.* (1) *General.* If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.